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## **SENATE BILL**

**No. 27**

### **Introduced by Senator Figueroa**

**(Coauthors: Senators Alpert, Kuehl, Romero, and Soto)**

(Coauthors: Assembly Members Calderon, Correa, Hancock, Lieber, Longville, Lowenthal, Montanez, Pavley, Vargas, and Wiggins)

December 2, 2002

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An act to amend Section 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Figueroa. Personal information: disclosure to direct marketers.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would, operative January 1, 2005, and subject to specified exceptions, require a business that discloses a customer's personal information, including information relating to income or purchases, to a ~~third~~ 3rd party for direct marketing purposes to provide the customer, within 30 days after the customer's request, as specified, in writing or by e-mail the names and addresses of the recipients of that information and specified details regarding the information disclosed, except as specified. The bill would also require businesses required to comply with the bill to provide information to customers regarding its privacy policy and the designated means of making an inquiry regarding that policy.

In addition to the legal remedies provided under current law, a customer would be entitled to recover a civil penalty, up to \$3,000, and attorney's fees and costs for a violation of these provisions as they read both before and after January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) For free market forces to have a role in
- 2 shaping the privacy practices of California businesses and for
- 3 "opt-in" and "opt-out" remedies to be effective, Californians
- 4 must be more than vaguely informed that a business might share
- 5 personal information with third parties. Consumers must, for these
- 6 reasons and pursuant to Section 1 of Article 1 of the California
- 7 Constitution, be better informed about what kinds of personal
- 8 information are purchased by businesses for direct marketing
- 9 purposes. With these specifics, consumers can knowledgeably
- 10 choose to opt-in or opt-out or choose among businesses that
- 11 disclose information to third parties for direct marketing purposes
- 12 on the basis of how protective the business is of consumers'
- 13 privacy.
- 14 (b) Nothing in this act is intended to impose, and this act may
- 15 not be construed to impose, any prohibition or requirement upon,
- 16 restraint of, or prerequisite to, a business disclosing or exchanging
- 17 personal information to third parties, including affiliated parties,
- 18 for any lawful purpose, including direct marketing purposes. This
- 19 act, generally, and Section 1798.83 of the Civil Code, specifically,
- 20 provides merely for descriptions of general business practices



1 regarding direct marketing to be disclosed to customers after those  
2 practices have occurred and, for example, does not require that  
3 personal information associated with specific individuals be  
4 disclosed.

5 SEC. 2. Section 1798.83 of the Civil Code is repealed.

6 SEC. 3. Section 1798.83 is added to the Civil Code, to read:

7 1798.83. (a) Except as otherwise provided in subdivision (d),  
8 if a business has an established business relationship with a  
9 customer and has within the immediately preceding calendar year  
10 disclosed personal information that corresponds to any of the  
11 categories of personal information set forth in paragraph (6) of  
12 subdivision (e) to third parties, and if the business knows or  
13 reasonably should know that the third parties used the personal  
14 information for the third parties' direct marketing purposes, that  
15 business shall, after the receipt of a written or electronic mail  
16 request, or, if the business chooses to receive requests by toll-free  
17 telephone or facsimile numbers, a telephone or facsimile request  
18 from the customer, provide all of the following information to the  
19 customer free of charge:

20 (1) In writing or by electronic mail, a list of the categories set  
21 forth in paragraph (6) of subdivision (e) that correspond to the  
22 personal information disclosed by the business to third parties for  
23 the third parties' direct marketing purposes during the  
24 immediately preceding calendar year.

25 (2) In writing or by electronic mail, the names and addresses of  
26 all of the third parties that received personal information from the  
27 business for the third parties' direct marketing purposes during the  
28 preceding calendar year and, if the nature of the third parties'  
29 business cannot reasonably be determined from the third parties'  
30 name, examples of the products or services marketed, if known to  
31 the business, sufficient to give the customer a reasonable  
32 indication of the nature of the third parties' business.

33 (b) (1) A business required to comply with this section shall  
34 designate a mailing address, electronic mail address, or, if the  
35 business chooses to receive requests by telephone or facsimile, a  
36 toll-free telephone or facsimile number, to which customers may  
37 deliver requests pursuant to subdivision (a). A business required  
38 to comply with this section shall, at its election, do at least one of  
39 the following:

(A) Notify all agents and managers who directly supervise employees who regularly have contact with customers of the designated addresses or numbers or the means to obtain those addresses or numbers and instruct those employees that customers who inquire about the business' privacy practices or the ~~businesses'~~ *business'* compliance with this section, shall be informed of the designated addresses or numbers or the means to obtain the addresses or numbers ~~by any customer who inquires.~~

(B) Add to the home page of its Web site, a link either to a page titled "Your Privacy Rights" or to add the words "Your Privacy Rights," to the home page's link to the business' privacy policy. If the business elects to add the words "Your Privacy Rights" to the link to the business' privacy policy, the words "Your Privacy Rights" shall be in the same style and size of the link to the business' privacy policy. If the business does not display a link to its privacy policy on the home page of its Web site, or does not have a privacy policy, the words "Your Privacy Rights" shall be written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language. The first page of the link shall describe a customer's rights pursuant to this section and shall provide the designated mailing address, e-mail address, as required, or toll-free telephone number or facsimile number, as appropriate. If the business elects to add the words "Your California Privacy Rights" to the home page's link to the business's privacy policy in a manner that complies with this subdivision, and the first page of the link describes a customer's rights pursuant to this section, and provides the designated mailing address, electronic mailing address, as required, or toll-free telephone or facsimile number, as appropriate, the business need not respond to requests that are not received at one of the designated addresses or numbers.

(C) Make the designated addresses or numbers, or means to obtain the designated addresses or numbers, readily available upon request of a customer at every place of business in California where the business or its agents regularly have contact with customers.

The response to a request pursuant to this section received at one of the designated addresses or numbers shall be provided within

1 30 days. Requests received by the business at other than one of the  
2 designated addresses or numbers shall be provided within a  
3 reasonable period, in light of the circumstances related to how the  
4 request was received, but not to exceed 150 days from the date  
5 received.

6 (2) A business that is required to comply with this section and  
7 Section 6803 of Title 15 of the United States Code may comply  
8 with this section by providing the customer the disclosure required  
9 by Section 6803 of Title 15 of the United States Code, but only if  
10 the disclosure also complies with this section.

11 (3) *A business that is required to comply with this section is not*  
12 *obligated to provide information associated with specific*  
13 *individuals and may provide the information required by this*  
14 *section in standardized format.*

15 (c) (1) A business *that is* required to comply with this section  
16 is not obligated to do so in response to a request from a customer  
17 more than once during the course of any calendar year. A business  
18 with fewer than a total of 20 full-time or part-time employees is  
19 exempt from the requirements of this section.

20 (2) ~~If the business~~ *a business that is* required to comply with  
21 this section adopts and discloses to the public, in its privacy policy,  
22 a policy of not disclosing personal information of customers to  
23 third parties for the third parties' direct marketing purposes unless  
24 the customer first affirmatively agrees to that disclosure, or of not  
25 disclosing the personal information of customers to third parties  
26 for the third parties' direct marketing purposes if the customer has  
27 exercised an option that prevents that information from being  
28 disclosed to third parties for those purposes, ~~and the customer~~  
29 ~~either has not affirmatively agreed or has exercised his or her~~  
30 ~~option to prevent those disclosures,~~ as long as the business  
31 maintains and discloses the policies, the business may comply with  
32 subdivision (a) by ~~notifying the customer that the business is not~~  
33 ~~permitted to disclose that information to third parties because~~  
34 ~~those disclosures have been prohibited by the customer or are~~  
35 ~~forbidden by the company's privacy policy.~~ *notifying the*  
36 *customer of his or her right to prevent disclosure of personal*  
37 *information, and providing the customer with a cost free means to*  
38 *exercise that right.*

(d) The following are among the disclosures not deemed to be disclosures of personal information by a business for a third parties' direct marketing purposes for purposes of this section:

(1) Disclosures between a business and a third party pursuant to contracts or arrangements pertaining to any of the following:

(A) The processing, storage, management, or organization of personal information, or the performance of services on behalf of the business during which personal information is disclosed, if the third party that processes, stores, manages, or organizes the personal information does not use the information for a third party's direct marketing purposes and does not disclose the information to additional third parties for their direct marketing purposes.

(B) Marketing products or services to customers with whom the business has an established business relationship where, as a part of the marketing, the business does not disclose personal information to third parties for the third parties' direct marketing purposes.

(C) Maintaining or servicing accounts, including credit accounts and disclosures pertaining to the denial of applications for credit or the status of applications for credit *and processing bills or insurance claims for payment.*

(D) *Public record information relating to the right, title, or interest in real property or information relating to property characteristics, as defined in Section 408.3 of the Revenue and Taxation Code, obtained from a governmental agency or entity or from a multiple listing service, as defined in Section 1087, and not provided directly by the customer to a business in the course of an established business relationship.*

(E) *Jointly offering a product or service pursuant to a written agreement with the third party that receives the personal information, provided that all of the following requirements are met:*

(i) *The product or service offered is a product or service of, and is provided by, at least one of the businesses that is a party to the written agreement.*

(ii) *The product or service is jointly offered, endorsed, or sponsored by, and clearly and conspicuously identifies for the customer, the businesses that disclose and receive the disclosed personal information.*



1     (iii) *The written agreement provides that the third party that*  
2 *receives the personal information is required to maintain the*  
3 *confidentiality of the information and is prohibited from disclosing*  
4 *or using the information other than to carry out the joint offering*  
5 *or servicing of a product or service that is the subject of the written*  
6 *agreement.*

7     (2) Disclosures to *or from* a consumer reporting agency of a  
8 customer's payment history or other information pertaining to  
9 transactions or experiences between the business and a customer  
10 if that information is to be reported in, or used to generate, a  
11 consumer report as defined in subdivision (d) of Section 1681a of  
12 Title 15 of the United States Code, and use of that information is  
13 limited by the federal Fair Credit Reporting Act.

14     (3) Disclosures of personal information by a business to a third  
15 party financial institution solely for the purpose of the business  
16 obtaining payment for a transaction in which the customer paid the  
17 business for goods or services with a check, credit card, charge  
18 card, or debit card, if the customer seeks the information required  
19 by subdivision (a) from the business obtaining payment, whether  
20 or not the business obtaining payment knows or reasonably should  
21 know that the third party financial institution has used the personal  
22 information for its direct marketing purposes.

23     (4) Disclosures of personal information between a licensed  
24 agent and its principal, if the personal information disclosed is  
25 necessary to complete, effectuate, administer, or enforce  
26 transactions between the principal and the agent, whether or not  
27 the licensed agent or principal also uses the personal information  
28 for direct marketing purposes, if that personal information is used  
29 by each of them solely to market products and services directly to  
30 customers with whom both have established business relationships  
31 as a result of the principal and agent relationship.

32     (5) Disclosures of personal information between a financial  
33 institution and a business that has a private label credit card,  
34 affinity card, retail installment contract, or co-branded card  
35 program with the financial institution, if the personal information  
36 disclosed is necessary for the financial institution to maintain or  
37 service accounts on behalf of the business with which it has a  
38 private label credit card, affinity card, retail installment contract,  
39 or branded card program, or to complete, effectuate, administer,  
40 or enforce customer transactions or transactions between the



1 institution and the business, whether or not the institution or the  
2 business also uses the personal information for direct marketing  
3 purposes, if that personal information is used solely to market  
4 products and services directly to customers with whom both the  
5 business and the financial institution have established business  
6 relationships as a result of the private label credit card, affinity  
7 card, retail installment contract, or co-branded card program.

8 (e) For purposes of this section:

9 (1) “Customer” means an individual who is a resident of  
10 California who provides personal information to a business during  
11 the creation of, or throughout the duration of, an established  
12 business relationship if the business relationship is primarily for  
13 personal, family, or household purposes.

14 (2) “Direct marketing purposes” means the use of personal  
15 information to solicit or induce a purchase, rental, lease, or  
16 exchange of products, goods, property, or services directly to  
17 individuals by means of the mail, telephone, or electronic mail for  
18 their personal, family, or household purposes. The sale, rental,  
19 exchange, or lease of personal information for consideration to  
20 businesses is a direct marketing purpose of the business that sells,  
21 rents, exchanges or obtains consideration for the personal  
22 information. “Direct marketing purposes” does not include the  
23 use of personal information (A) by bona fide tax exempt charitable  
24 or religious organizations to solicit charitable contributions, (B) to  
25 raise funds from and communicate with individuals regarding  
26 politics and government, (C) by a third party when the third party  
27 receives personal information solely as a consequence of having  
28 obtained for consideration permanent ownership of accounts that  
29 might contain personal information, or (D) by a third party when  
30 the third party receives personal information solely as a  
31 consequence of a single transaction where, as a part of the  
32 transaction, personal information had to be disclosed in order to  
33 effectuate the transaction.

34 (3) “Disclose” means to disclose, release, transfer,  
35 disseminate, or otherwise communicate orally, in writing, or by  
36 electronic or any other means to any third party.

37 (4) “Employees who regularly have contact with customers”  
38 means employees whose contact with customers is not incidental  
39 to their primary employment duties, and whose duties do not  
40 predominantly involve ensuring the safety or health of the



businesses customers. It includes, but is not limited to, employees whose primary employment duties are as cashier, clerk, customer service, sales, or promotion. It does not, by way of example, include employees whose primary employment duties consist of food or beverage preparation or service, maintenance and repair of the business' facilities or equipment, direct involvement in the operation of a motor vehicle, aircraft, watercraft, amusement ride, heavy machinery or similar equipment, security, or participation in a theatrical, literary, musical, artistic, or athletic performance or contest.

(5) "Established business relationship" means a relationship formed by a voluntary, two-way communication between a business and a customer, with or without an exchange of consideration, for the purpose of purchasing, renting, or leasing real or personal property, or any interest therein, or obtaining a product or service from the business, if the relationship is ongoing and has not been expressly terminated by the business or the customer, or if the relationship is not ongoing, but is solely established by the purchase, rental, or lease of real or personal property from a business, or the purchase of a product or service, no more than 18 months have elapsed from the date of the purchase, rental, or lease.

(6) (A) The categories of personal information required to be disclosed pursuant to paragraph (1) of subdivision (a) are all of the following:

- (i) Name and address.
- (ii) Electronic mail address.
- (iii) Age or date of birth.
- (iv) Names of children.
- (v) Electronic mail or other addresses of children.
- (vi) Number of children.
- (vii) The age or gender of children.
- (viii) Height.
- (ix) Weight.
- (x) Race.
- (xi) Religion.
- (xii) Occupation.
- (xiii) Telephone number.
- (xiv) Education.
- (xv) Political party affiliation.

- 1 (xvi) Medical condition.
- 2 (xvii) Drugs, therapies, or medical products or equipment used.
- 3 (xviii) The kind of product the customer purchased, leased, or
- 4 rented.
- 5 (xix) Real property purchased, leased, or rented.
- 6 (xx) The kind of service provided.
- 7 (xxi) Social security number.
- 8 (xxii) Bank account number.
- 9 (xxiii) Credit card number.
- 10 (xxiv) Debit card number.
- 11 (xxv) Bank or investment account, debit card, or credit card
- 12 balance.
- 13 (xxvi) Payment history.
- 14 (xxvii) Information pertaining to the customer's
- 15 creditworthiness, assets, income, or liabilities.
- 16 (B) If a list, description, or grouping of customer names or
- 17 addresses is derived using any of these categories, and is disclosed
- 18 to a third party for direct marketing purposes in a manner that
- 19 permits the third party to identify, determine, or extrapolate any
- 20 other personal information from which the list was derived, and
- 21 that personal information when it was disclosed identified,
- 22 described, or was associated with an individual, the categories set
- 23 forth in this subdivision that correspond to the personal
- 24 information used to derive the list, description, or grouping shall
- 25 be considered personal information for purposes of this section.
- 26 (7) "Personal information" as used in this section means any
- 27 information that when it was disclosed identified, described, or
- 28 was able to be associated with an individual and includes all of the
- 29 following:
- 30 (A) An individual's name and address.
- 31 (B) Electronic mail address.
- 32 (C) Age or date of birth.
- 33 (D) Names of children.
- 34 (E) Electronic mail or other addresses of children.
- 35 (F) Number of children.
- 36 (G) The age or gender of children.
- 37 (H) Height.
- 38 (I) Weight.
- 39 (J) Race.
- 40 (K) Religion.



- 1 (L) Occupation.
- 2 (M) Telephone number.
- 3 (N) Education.
- 4 (O) Political party affiliation.
- 5 (P) Medical condition.
- 6 (Q) Drugs, therapies, or medical products or equipment used.
- 7 (R) The kind of product the customer purchased, leased, or
- 8 rented.
- 9 (S) Real property purchased, leased, or rented.
- 10 (T) The kind of service provided.
- 11 (U) Social security number.
- 12 (V) Bank account number.
- 13 (W) Credit card number.
- 14 (X) Debit card number.
- 15 (Y) Bank or investment account, debit card, or credit card
- 16 balance.
- 17 (Z) Payment history.
- 18 (AA) Information pertaining to creditworthiness, assets,
- 19 income, or liabilities.
- 20 (8) “Third party” or “third parties” means one or more of the
- 21 following:
- 22 (A) A business that is a separate legal entity from the business
- 23 that has an established business relationship with a customer.
- 24 (B) A business that has access to a database that is shared
- 25 among businesses, if the business is authorized to use the database
- 26 for direct marketing purposes, unless the use of the database is
- 27 exempt from being considered a disclosure for direct marketing
- 28 purposes pursuant to subdivision (d).
- 29 (C) A business not affiliated by a common ownership or
- 30 common corporate control with the business required to comply
- 31 with subdivision (a).
- 32 (f) (1) Disclosures of personal information for direct
- 33 marketing purposes between affiliated third parties that share the
- 34 same brand name are exempt from the requirements of paragraph
- 35 (1) of subdivision (a) unless the personal information disclosed
- 36 corresponds to one of the following categories, in which case the
- 37 customer shall be informed of those categories listed in this
- 38 subdivision that correspond to the categories of personal
- 39 information disclosed for direct marketing purposes and the third



1 party recipients of personal information disclosed for direct  
2 marketing purposes pursuant to paragraph (2) of subdivision (a):

3 (A) Number of children.

4 (B) The age or gender of children.

5 (C) Electronic mail or other addresses of children.

6 (D) Height.

7 (E) Weight.

8 (F) Race.

9 (G) Religion.

10 (H) Telephone number.

11 (I) Medical condition.

12 (J) Drugs, therapies, or medical products or equipment used.

13 (K) Social security number.

14 (L) Bank account number.

15 (M) Credit card number.

16 (N) Debit card number.

17 (O) Bank or investment account, debit card, or credit card  
18 balance.

19 (2) If a list, description, or grouping of customer names or  
20 addresses is derived using any of these categories, and is disclosed  
21 to a third party or third parties sharing the same brand name for  
22 direct marketing purposes in a manner that permits the third party  
23 to identify, determine, or extrapolate the personal information  
24 from which the list was derived, and that personal information  
25 when it was disclosed identified, described, or was associated with  
26 an individual, any other personal information that corresponds to  
27 the categories set forth in this subdivision used to derive the list,  
28 description, or grouping shall be considered personal information  
29 for purposes of this section.

30 (3) If a business discloses personal information for direct  
31 marketing purposes to affiliated third parties that share the same  
32 brand name, the business that discloses personal information for  
33 direct marketing purposes between affiliated third parties that  
34 share the same brand name may comply with the requirements of  
35 paragraph (2) of subdivision (a) by providing the overall number  
36 of affiliated companies that share the same brand name.

37 (g) The provisions of this section are severable. If any  
38 provision of this section or its application is held invalid, that  
39 invalidity shall not affect other provisions or applications that can  
40 be given effect without the invalid provision or application.



1 (h) *This section does not apply to a financial institution that is*  
2 *subject to the California Financial Information Privacy Act*  
3 *(Division 1.2 (commencing with Section 4050) of the Financial*  
4 *Code) if the financial institution is in compliance with Sections*  
5 *4052, 4025, 4053, 4053.5 and 4054.6 of the Financial Code, as*  
6 *those sections read when they were chaptered on August 28, 2003*  
7 *and as subsequently amended by the Legislature or by initiative.*

8 (i) This section shall become operative on January 1, 2005.

9 SEC. 4. Section 1798.84 of the Civil Code is amended to read:  
10 1798.84. (a) Any waiver of a provision of this title is contrary  
11 to public policy and is void and unenforceable.

12 (b) Any customer injured by a violation of this title may  
13 institute a civil action to recover damages.

14 (c) In addition, for a willful, intentional, or reckless violation  
15 of Section 1798.83, a customer may recover a civil penalty not to  
16 exceed three thousand dollars (\$3,000) per violation; otherwise,  
17 the customer may recover a civil penalty of up to five hundred  
18 dollars (\$500) per violation for a violation of Section 1798.83.

19 (d) Unless the violation is willful, intentional, or reckless, a  
20 business that is alleged to have not provided all the information  
21 required by subdivision (a) of Section 1798.83, to have provided  
22 inaccurate information, failed to provide any of the information  
23 required by subdivision (a) of Section 1798.83, or failed to provide  
24 information in the time period required by subdivision (b) of  
25 Section 1798.83, may assert as a complete defense *in any action*  
26 *in law or equity* that it thereafter provided regarding the  
27 information that was alleged to be untimely, all the information,  
28 or accurate information, to all customers who were provided  
29 incomplete or inaccurate information, respectively, within 90 days  
30 of the date the business knew that it had failed to provide the  
31 information, timely information, all the information, or the  
32 accurate information, respectively.

33 (e) Any business that violates, proposes to violate, or has  
34 violated this title may be enjoined.

35 (f) A prevailing plaintiff in any action commenced under  
36 Section 1798.83 shall also be entitled to recover his or her  
37 reasonable attorney's fees and costs.

- 1 (g) The rights and remedies available under this section are
- 2 cumulative to each other and to any other rights and remedies
- 3 available under law.

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